

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**MICHAEL J TURNBULL, and
MORIAH M TURNBULL,**

Debtors.

Case No. **04-63831-7**

JOSEPH V. WOMACK,

Plaintiff.

-VS-

**MICHAEL J TURNBULL, and
MORIAH M TURNBULL,**

Defendants.

Adv No. **07-00008**

ORDER

At Butte in said District this 16th day of March, 2007.

On January 29, 2007, Plaintiff filed this adversary proceeding. The return of summons states that the Defendants and their attorney were served by first class mail at the following respective addresses: "Michael Turnbull, 464 Rawlings Drive, Springcreek, NV 81805," "Moriah Turnbull, 330 Genes Lane, Savannah, TN 38372," and "Roy Johnson, Johnson Law Office, PO Box 1438, Billings, MT 59103-1438." The above addresses for Defendants Turnbull are not the addresses provided on Debtors' petition. On the petition, Defendants Turnbull listed their address as "843 Howard, Billings, MT 59101,"

F.R.B.P. 7004(b)(9) provides, in pertinent part that “. . . service may be made within the United States by first class mail postage prepaid as follows: (9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing a copy of the summons and complaint to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.” The Court notes that the Rule was amended effective December 1, 2006, to eliminate the additional requirement that debtor’s attorney be served at the attorney’s post office address, and to eliminate the option to serve the debtor at an address disclosed in debtor’s statement of affairs.

Although Trustee Womack most likely used more current addresses for the Defendants that he has available through his own investigation, service of a complaint pursuant to F.R.B.P. 7004(b)(9) must be served according to the Rule on the address disclosed by Debtors’ in their petition, unless they have updated their address by a filed writing. Consequently, the complaint and summons needed to be mailed by first class mail to Debtors at the address disclosed on the petition and if more current addresses are investigatively-determined, the Plaintiff should also include such addresses, but it appears that, by the Rule, Plaintiff is not technically required to do use the more current investigatively-determined addresses. The use of all known addresses seem to more compliant to the requirements of due process.

On March 12, 2007, Plaintiff filed a motion for the entry of the default of Defendants and copied the motion to Defendants at the Nevada and Tennessee addresses and to their attorney. No appearances have been filed. Based upon the forgoing and for cause,

IT IS ORDERED that Plaintiff’s motion for the entry of the default of Defendants is denied with leave for Plaintiff to request a new summons so Plaintiff may serve Defendants with

summons and complaint at the address disclosed on Defendants' petition and at the more current investigatively-determined addresses.

BY THE COURT



HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana